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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE EASTERN DISTRICT OF CALIFORNIA
6

7 JOHNNY L. FRANKLIN, JR.,

8 Petitioner,

9 vs.

10 GAIL LEWIS,

11 Respondent.

No. 2:03-CV-0279-RRB-KJM-P

ORDER

12
13 Petitioner Johnny L. Franklin, Jr. ("Petitioner"), a
14 state prisoner proceeding pro se, has timely filed a Notice of
15 Appeal (Docket No. 26) of the Court's May 16, 2006, denial of his
16 application for writ of habeas corpus (Docket No. 23). However,
17 before Petitioner can appeal the Court's decision, a certificate of
18 appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P.
19 22(b).

20 A certificate of appealability may issue under 28 U.S.C.
21 § 2253 "only if the applicant has made a substantial showing of the
22 denial of a constitutional right." 22 U.S.C. § 2253(c)(2)(emphasis
23 added). Consequently, the Court "must either issue a certificate
24 of appealability[, indicating which issues satisfy the required

showing,] or state why a certificate should not issue." Fed. R.
1 App. P. 22(b).

2 For the reasons set forth in Magistrate Judge Mueller's
3 February 24, 2006, Findings and Recommendations (Docket No. 19),
4 the Court concludes Petitioner has not made a substantial showing
5 of the denial of a constitutional right. Accordingly, a
6 certificate of appealability should not issue in this action.

7 IT IS SO ORDERED.

8 ENTERED this 26th day of June, 2006.

9 /s/ RALPH R. BEISTLINE
10 UNITED STATES DISTRICT JUDGE
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